ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

COMMENTS OF McCAW CELLULAR COMMUNICATIONS, INC.

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McCaw Cellular Communications, Inc. ("McCaw"), by its attorneys, hereby submits its comments with respect to the Commission's Further Notice of Proposed Rulemaking in the above-captioned docket.[1] The proposals set forth in the Further Notice represent a substantial undertaking by the Commission and the mobile services industry in order to implement the regulatory structure adopted in the Second Report and Order in this docket.[2] The scheme reflected in the Second Report and Order "was designed to ensure symmetrical regulatory treatment of competing mobile service providers, to promote further competition and economic growth in the mobile services marketplace, and to establish an

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[1] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252 (May 20, 1994) ("Further Notice").

[2] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994), erratum, Mimeo No. 92486 (Mar. 30, 1994) ("Second Report and Order"), petitions for recon. pending.

appropriate level of regulation to protect mobile service consumers."[3]

The proposals contained in the Further Notice are intended "to complete the transition to the new regulatory regime envisioned by Congress and establish regulatory symmetry in the regulation of mobile services."[4] Given the August 10, 1994 deadline set by Congress for Commission action on the implementing rule proposals,[5] the Commission faces a very substantial task. McCaw believes, as detailed below, that the Further Notice proposals represent important progress in meeting this statutory mandate. At the same time, the Further Notice raises some critical competitive issues that must be carefully resolved to achieve the fundamental Congressional goal of regulatory parity. McCaw recommends revisions and specific further modifications to fulfill the statutory directive. Finally, these comments note several areas not specifically presented in the Further Notice where action is needed in order to obtain regulatory symmetry.

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[3] Id. ¶ 1.

[4] Id. ¶ 2.

[5] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(d)(3), 107 Stat. 312, 397 (1993) ("Budget Act").

I. INTRODUCTION

As the Commission is aware, McCaw provides a number of commercial mobile radio service ("CMRS") offerings, including cellular, paging, and 800 MHz air-to-ground services. McCaw also currently anticipates seeking new personal communications services licenses. Given its activity in the CMRS marketplace, McCaw has participated in the Commission's proceedings concerning PCS,[6] CMRS,[7] and the revisions to Part 22 of the Commission's Rules.[8]

These comments address a number of general issues and policies affecting CMRS. In terms of specific service

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[6] Amendment of the Commission's Rules To Establish New Personal Communications Services, 5 FCC Rcd 3995 (1990) (Notice of Inquiry); 6 FCC Rcd 6601 (1991) (Policy Statement and Order); 7 FCC Rcd 5676 (1992) (Notice of Proposed Rule Making and Tentative Decision), erratum, 7 FCC Rcd 5779 (1992); 8 FCC Rcd 7700 (1993) (Second Report and Order ("Broadband PCS Second Report and Order") recon., Amendment of the Commission's Rules To Establish New Personal Communications Services, FCC 94-144 (June 13, 1994) (Memorandum Opinion and Order) ("Broadband PCS Reconsideration Order").

[7] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 8 FCC Rcd 7988 (1993) (Notice of Proposed Rulemaking); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1056 (1994) (First Report and Order); Second Report and Order, 9 FCC Rcd 1411; Further Notice, FCC 94-100.

[8] Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, 7 FCC Rcd 3658 (1992) (Notice of Proposed Rulemaking) ("Part 22 Rewrite Notice"); Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, FCC 94-102 (May 20, 1994) (Further Notice of Proposed Rulemaking). McCaw is concurrently filing comments with respect to the Commission's Further Notice of Proposed Rulemaking in CC Docket No. 92-115.

offerings, the comments focus primarily on McCaw's cellular operations and those entities and services with which those operations may compete. McCaw's Messaging Division (engaged primarily in paging activities) generally supports the positions expressed in the comments being filed by the Personal Communications Industry Association ("PCIA") in this docket.

II. SUMMARY

The Commission's Further Notice in this proceeding raises a host of basic policy and practical rule implementation issues that must be resolved in an abbreviated time period. Accordingly, it is essential that, as the Commission reviews and revises its proposal here, it adhere to the basic guiding principles established in its Second Report and Order that built the framework for achieving regulatory parity. The Commission has recognized that "our role is to establish a regulatory regime under which the marketplace -- and not the regulatory arena -- shapes the development and delivery of mobile services to meet the demands and needs of consumers."

Initially, the Further Notice raises two policy issues that go to the heart of the substantive issues concerning the allocation and use of spectrum in a competitive environment. In resolving these two important issues, as detailed below, the Commission should bear in mind the mandate of the Second

Report and Order that, as it purges the CMRS arena of regulatory imbalances, it does not establish unwarranted regulatory impediments to the development of a competitive marketplace.

First, in intended furtherance of competitive goals, the Commission proposes the adoption of a blanket CMRS spectrum cap, set at just over 40 MHz of spectrum. McCaw strongly objects to the adoption of any such cap as inconsistent with the public interest. The Further Notice reflects no factual basis for imposing a blanket CMRS cap across a broad array of competitive services. Moreover, it is not apparent that a spectrum cap would be an appropriate remedy for competitive concerns even if they were identified.

The spectrum cap proposed by the Commission raises a host of critical implementation issues that demonstrate the problems with the proposal. The level of the cap proposed by the Commission would exclude many existing carriers from participation in further CMRS opportunities as new services may be developed. This exclusion would penalize those who have done the most to develop CMRS and who have the most to bring to the development of new services. The outcome of such exclusion would be to delay the introduction of new CMRS offerings.

Additional issues raised by the proposed general cap include the geographic applicability of the cap, which raises substantial implementation problems in light of the different

service areas found in different CMRS subparts. The 5 percent attribution limit is not only too low but fails to take into account, as was done in the PCS proceeding, the settlement history of the cellular industry. Finally, the Commission must address the services to be included in the cap; otherwise, the cap may result in arbitrary treatment of marketplace competitors.

If the Commission does identify specific instances where public interest dictates adoption of spectrum caps, it should address this issue in the course of the licensing proceeding for the particular service. Moreover, where spectrum caps are adopted in such circumstances, they should be applied equivalently to all similarly situated licensees. That analysis dictates applying limitations on enhanced specialized mobile radio ("ESMR") eligibility for PCS licenses that are equivalent to those adopted for cellular carriers.

Second, the Further Notice contemplates maintaining a significant disparity in the respective ability of PCS providers and cellular operators to compete on equal footing in the marketplace. Specifically, while the Commission explicitly allows PCS providers to provide private mobile radio service ("PMRS") as well as CMRS on their licensed spectrum, the Further Notice indicates that many existing CMRS operators (including cellular carriers) will be denied this opportunity. This regulatory difference will be

directly translated into marketplace disparities as some CMRS providers are able to offer packages of services that others are not. This in turn affects the competitiveness of both the overall wireless marketplace and the success of the individual operator. The Commission instead should extend to CMRS licensees the same capability to provide CMRS and PMRS as is available to PCS licensees.

Beyond these central policy matters, the Commission is obliged to determine the nature of "substantially similar" services, and then apply that standard to the Part 90 and Part 22 services before it. That definition should be broadly construed to be true to the goals of regulatory parity. Rules that focus on the relationship between the service provided and customer demand and usage strike an appropriate balance.

While comparable regulation of substantially similar services does not require that all regulations be identical for all CMRS offerings, the Commission must ensure that any remaining differences in rules do not undermine fair competition among CMRS providers. In this regard, the Commission must also consider the respective regulatory treatment of Part 24 PCS operators as compared to existing Part 22 and 90 licensees. In addition to the ability to combine CMRS and PMRS offerings, discussed above, the current rules for PCS operators provide substantially more flexibility in their design of services and operations than

is granted to other categories of CMRS providers. Important differences, for example, exist with respect to the ability of the various types of CMRS operators to provide fixed services under their radio licenses. The Commission should resolve this anomaly by extending the same level of flexibility to all CMRS licensees as is currently accorded to PCS providers.

With regard to the specific technical, operational, and licensing rules affecting CMRS operators, McCaw urges the Commission to adopt the following positions:

- Antenna height and transmitter rules applied to cellular, ESMR, and PCS must be conformed to ensure regulatory parity among these competing providers of service.
- Emission requirements for cellular carriers should be deleted.
- The Commission should adopt a definition of "commencement of service."
- The permissible uses of cellular, ESMR, and PCS spectrum should be conformed so that licensees in these services can compete on equal footing in designing customer service offerings.
- Policies regarding management contracts and other licensee operational arrangements should be conformed more closely to the interpretations applied in Part 90 services.
- The proposed Form 600 needs further revision, and Commission action should be delayed until the Commission staff can undertake detailed consultation with members of the mobile services industry.
- Transfer and assignment policies and application forms should be conformed.
- All CMRS licensees should supply equivalent qualifying information, since they are being evaluated under the same statutory standard.

- Application and regulatory fees should be conformed.
- The cellular Phase II unserved area application filing procedures -- first come, first served -- should be retained.
- The Commission must adopt a clear definition of major and minor amendments and modifications, guided by the principle that regulatory filings should be limited as much as possible.
- Fixed microwave licensing procedures also must be brought into alignment in order to reflect the new CMRS regulatory structure.

III. THE FURTHER NOTICE PRESENTS FUNDAMENTAL POLICY ISSUES DIRECTLY GOVERNING THE LEVEL OF COMPETITION IN THE CMRS MARKETPLACE

While the Further Notice largely focuses on conforming the technical, operational, and licensing rules for existing classes of CMRS providers, its proposals present two fundamental policy issues directly related to the competitive marketplace the Commission is striving to establish. First, the spectrum cap proposal has obvious significance for the competitive opportunities available to all CMRS providers. Second, the Commission's rules accord special privileges to PCS operators by permitting them to offer combined CMRS and PMRS under a single license, while denying equivalent authority to most existing classes of CMRS operators.

In reviewing these issues, the Commission must return to its statement of purpose underlying the newly adopted mobile services regulatory structure. Implementation of a blanket CMRS spectrum cap and retention of the disparity in ability to combine PMRS/CMRS run counter to these goals of ensuring

symmetrical regulatory treatment, promoting a competitive mobile services marketplace, and establishing the appropriate level of necessary regulation.

A. The Commission Should Not Adopt a Blanket CMRS Spectrum Cap

The Further Notice seeks comment on the wisdom of establishing a general spectrum cap, similar to the existing 40 MHz limit on broadband PCS spectrum aggregation, that could encompass all CMRS services.[9] Apparently, the Commission believes that the flexible regulatory environment applicable to CMRS justifies this approach: "[w]e are . . . concerned that licensees with the ability to acquire large amounts of CMRS spectrum in a given area could acquire excessive market power by potentially reducing the numbers of competing providers, not only within specific service categories but also in CMRS generally."[10] Accordingly, the Commission tentatively concludes that a general CMRS spectrum cap of slightly more than 40 MHz will allow "reasonable flexibility for PCS licensees and other existing mobile service providers to provide both broadband and narrowband services."[11]

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[9] Further Notice ¶ 93.

[10] Id. ¶ 89.

[11] Id. ¶ 93.

In addition, the Further Notice tentatively proposes an attributable ownership interest of five percent or more, as adopted in the PCS proceeding. Thus, "all CMRS ownership interests of five percent or more [would] be attributed to the holder of such interests for purposes of [applying the] spectrum cap."[12]

Surprisingly, the Commission fails to specify the basis for the anticompetitive concerns at the root of its spectrum cap proposal. As a practical matter, a generalized CMRS spectrum cap is neither necessary to maintain a competitive mobile services marketplace nor to further the public interest. True competitive concerns are better addressed by mechanisms targeted at unacceptable behavior.

Moreover, the spectrum aggregation limits contemplated by the FCC in the Further Notice may prevent cellular and broadband PCS providers from participating meaningfully in the CMRS marketplace as it continues to evolve and develop. McCaw fully expects that additional spectrum will be made available for as yet unknown and undefined services, some of which undoubtedly will compete in the CMRS marketplace. Exclusion of existing licensees from broad-based participation in CMRS will penalize the public as well as those entities whose efforts have led to the availability of a range of consumer and business telecommunications CMRS offerings in a highly competitive marketplace. By

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[12] Id. ¶ 101.

artificially defining the scope of participation by those entities who thus have the most contributions to make to the development of CMRS, the introduction of new offerings to the public undoubtedly will be delayed.

In the PCS context, the Commission explicitly recognized the benefits that existing CMRS providers (specifically, cellular) can provide in establishing a new service, "including capital, economies of scope, and experience and expertise in the provision of mobile communications services."[13] The proposed spectrum cap, however, simply ignores these benefits that existing carriers could bring to new services by potentially foreclosing their participation.

McCaw believes in those rare cases where the Commission has specifically identified the need for a spectrum cap to protect the public interest, any valid competitive concerns could be more appropriately addressed through the licensing process for the particular service. As the Commission acknowledges, the existing PCS restrictions "already limit aggregation by licensees in services accounting for a substantial percentage of CMRS spectrum."[14] For example, the 2 GHz broadband PCS rules restrict most licensees to a total of 40 MHz of PCS spectrum in a geographic area.[15] Moreover,

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[13] Broadband PCS Reconsideration Order ¶ 103.

[14] Id. ¶ 92.

[15] See Broadband PCS Second Report and Order, 8 FCC Rcd at 7728.

for purposes of determining compliance with this cap, all PCS ownership interests of 5 percent or more are attributed to the holder of such interest.[16] Cellular licensees, however, are not permitted to acquire more than 10 MHz of PCS spectrum in the markets where they operate cellular systems, and a 20 percent attribution rule is used to gauge this limitation.[17] Eligibility for any of the 30 MHz broadband PCS licenses is restricted to applicants with no more than a 20 percent ownership interest in a cellular carrier that has a service area with no more than a 10 percent population overlap in the particular MTA or BTA at issue.[18]

Similarly, the Commission's 900 MHz narrowband PCS rules prohibit a licensee from aggregating more than three 50 kHz

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[16] Id.

[17] At its June 9, 1994, Open Meeting, in response to several petitions for reconsideration, the Commission amended its broadband PCS rules to permit entities with attributable cellular interests covering 10 percent or more of the population in a PCS service area to acquire an additional 5 MHz of PCS spectrum after January 1, 2000, contingent upon compliance with the five year construction requirement. Broadband PCS Reconsideration Order ¶ 67.

[18] Again on reconsideration, the FCC amended its rules to allow entities with attributable interests in cellular companies whose combined cellular geographic service areas overlap between 10 and 20 percent of the PCS service area population to submit bids for more than 10 MHz of PCS spectrum, provided that such entities divest themselves of sufficient attributable cellular interests to comply with the rules within 90 days after grant of a PCS license. Broadband PCS Reconsideration Order ¶¶ 144-46.

paired or unpaired channels in any geographic area,[19] totaling up to 300 kHz. Again, a 5 percent attribution rule is applied.

While these requirements represent the Commission's considered judgment on how best to ensure competition and diversity among PCS providers, there is no basis for extending such limitations across the board to all CMRS offerings. Given the evolving nature of the mobile services marketplace, the Commission should instead adopt a service-by-service approach to evaluating the desirability of spectrum caps. In this fashion, the agency may assess information germane to new CMRS offerings as it becomes available.

In contrast, adoption of a blanket spectrum cap raises very difficult questions with respect to its fair and equitable application consistent with the regulatory parity decisions. In effect, such a policy requires the Commission to second guess such complex issues as the future availability of additional CMRS spectrum, the appropriate level for a blanket spectrum cap, the impact of applying the cap to a broad array of emerging, competitive services, and how the cap should be applied to geographic areas. For example, the Further Notice contains very little discussion

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[19] See Amendment of the Commission's Rules To Establish New Narrowband Personal Communications Services, 8 FCC Rcd 7162, 7168 (1993) ("PCS First Report and Order") recon., 9 FCC Rcd 1309 (1994).

as to why the CMRS spectrum cap should approximate the 40 MHz limit on broadband PCS spectrum aggregation. Contrary to providing "licensees with enough flexibility to invest in and develop a range of CMRS services,"[20] as discussed above, this limit would severely hamper existing operators' ability to offer an array of service packages by restricting access to newly authorized spectrum allocations.

In addition, adoption of a spectrum cap across a number of CMRS services or all CMRS offerings raises serious questions about how to define the geographic service areas in which the cap would apply. The Further Notice seeks comment on use of standardized geographic areas, such as Major Trading Areas ("MTAs") or Basic Trading Areas ("BTAs"), even while "recognizing that this proposed approach is complicated by the fact that some CMRS services are not licensed in standardized geographic areas."[21] Indeed, the service areas of ESMR and paging operators are self-defined, while PCS is licensed on an MTA/BTA basis and cellular service on a Metropolitan Statistical Area ("MSA")/Rural Service Area ("RSA") basis.

Even if more than one type of standardized area was adopted, administrative rules still must be crafted to handle cases where CMRS licenses are held by a large number of individual entities. Those entities with multiple minority

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[20] Further Notice ¶ 93.

[21] Id. ¶ 99.

interests in various operations must be accommodated to ensure that a general CMRS spectrum cap is not unfairly applied. Indeed, those minority holdings may reflect historical developments fostered by Commission policies. Alternatively, these interest holders may be the source of funds necessary to the development of service and the viability of a particular operator.

The proposed attribution standard further complicates matters by raising questions not only about the ownership percentage to be applied, but also about the amount of geographic overlap between CMRS interests to be considered significant and the treatment of designated entities. Clearly, a 5 percent attribution rule would thwart the development of innovative new services by existing service providers.

Furthermore, such a rule is at odds with the Commission's recently adopted PCS rules. The Commission's order on reconsideration in the PCS docket set a 20 percent attribution rule for cellular carriers, in part in recognition of the history of licensing and settlement policies in this service.[22] Despite this realistic approach to defining the attribution rules in the case of PCS, the Commission's proposal in this docket absolutely ignores the issue. The Commission's failure to take into account cellular settlement results in the same reasonable manner as

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[22] Broadband PCS Reconsideration Order ¶ 110.

in the PCS arena serves to underscore the problems with its blanket spectrum cap proposal.

The Commission recognizes that it must determine the range of services -- all CMRS; broadband CMRS only; inclusive of satellite services; etc. -- to be subjected to the cap.[23] This decision has obvious fundamental effects for the implementation of a spectrum aggregation limit. Exclusion of some services will result in arbitrary treatment of marketplace competitors and undercut achievement of the Congressional regulatory parity goals.

For these reasons, adoption of a blanket CMRS spectrum cap is contrary to the Commission's goal of promoting competition and diversity in the CMRS marketplace. McCaw therefore urges the Commission to abandon this proposal and, instead, to consider service specific spectrum limitations as a more appropriate means to addressing any valid competitive concerns.

Finally, although it is not fully apparent from the text of the Further Notice itself, the Broadband PCS Reconsideration Order indicates that this proceeding also is intended to consider "the eligibility of wide-area SMRs and other commercial radio services to participate in PCS."[24] ESMR operators have positioned themselves -- through marketing and technical design -- to compete directly in the

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[23] See Further Notice ¶¶ 90-91, 94-98.

[24] Broadband PCS Reconsideration Order ¶ 104.

marketplace with cellular service providers. As such, considerations of regulatory parity and a level playing field dictate that ESMR operators be subject to the same eligibility restrictions and ownership constraints as have been applied to cellular licensees seeking PCS licenses. Fair application of the policies to comparably situated competitors will ensure that no entity gains a competitive advantage merely by finding a loophole that can be used to the competitive detriment of others.

B. All CMRS Operators Should Be Permitted To Offer Combined PMRS and CMRS Services on Their Licensed Spectrum

McCaw demonstrated in its Petition for Clarification of the Commission's Second Report and Order in this proceeding that PCS providers appear to be afforded greater regulatory flexibility than other CMRS licensees under existing FCC rules.[25] Most critically, while the agency expressly permits PCS carriers to provide private mobile radio service ("PMRS") on their licensed spectrum, the same opportunity and flexibility is not currently extended to all other CMRS providers.[26] Indeed, the Further Notice explicitly declines to extend the Commission's licensing procedures for combined CMRS/PMRS operation under a single PCS license "to mobile

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[25] See McCaw's Petition for Clarification, GN Docket No. 93-252, at 15-16 (filed May 19, 1994).

[26] Id.

service categories where only CMRS or PMRS service is allowed . . . . Thus, in Part 22 services that are limited to CMRS operation and Part 90 services that are limited to PMRS operation, applicants may not seek authority to provide 'combined' service."[27] The Further Notice offers no justification for this refusal to extend comparable opportunities to all CMRS licensees.

This imbalance in service flexibility will have real competitive consequences in the marketplace. PCS licensees have opportunities to create service packages and respond to customer needs and preferences that are denied cellular and other CMRS operators.

Consistent with both Congress' and the Commission's efforts to ensure that similarly situated mobile service licensees are subject to comparable regulatory treatment, the FCC should amend its rules to explicitly authorize all CMRS providers to offer private and commercial mobile services utilizing the same authorized frequency. This change is necessary to level the playing field for all CMRS providers. By eliminating regulatory discrepancies and relying instead on market forces, the Commission can "ensure that the most efficient service providers prevail" and "create incentives

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[27] Further Notice ¶ 148 n.259. This denied opportunity must, as described below, be taken into account if the Commission decides to implement any form of generally applicable CMRS spectrum aggregation limit or cap.

for firms to offer innovative and improved services at the lowest possible costs. . . ."[28]

IV. THE COMMISSION'S ACTION IN THIS AND RELATED DOCKETS MUST ENSURE A FULL AND FAIR IMPLEMENTATION OF THE REGULATORY PARITY MANDATE

The "Budget Act" directs the Commission to amend its rules as may be necessary and practical to ensure that former private land mobile service providers reclassified as CMRS licensees are subject to technical requirements comparable to those that apply to providers of substantially similar common carrier services.[29] Clearly, the "first step in this process is to define what is meant by 'substantially similar' services for this purpose."[30] In making such determinations, the Commission:

> start[s] with the assumption that a principle objective of Congress in revising Section 332 [of the Communications Act] was to benefit consumers by promoting competition in the mobile services marketplace. Congress created CMRS as a new classification of mobile services to ensure that similar services are accorded similar regulatory treatment. Consistent with that objective, our role is to establish a regulatory regime under which the marketplace -- and not the regulatory arena -- shapes the development and

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[28] Further Notice ¶ 12.

[29] Budget Act § 6002(d)(3)(B).

[30] Further Notice ¶ 10.

delivery of mobile services to meet the demands and needs of consumers.[31]

These considerations dictate that the Commission adopt a sufficiently broad interpretation of "substantially similar" services. Moreover, the philosophy enunciated above should guide the Commission's efforts to implement "comparable" regulation.[32] Only in this manner can the Commission ensure that marketplace competitors seeking to serve the same or similar groups of potential subscribers are not subject to unwarranted regulatory discrepancies or regulatory impediments.

A. The Commission's Definition of "Substantially Similar" Services Should Be Tailored To Aid in the Accomplishment of the Goals Outlined in the Further Notice

As noted above, the Commission properly proposes to evaluate "substantially similar" services on the basis of whether or not the CMRS providers in question compete to meet similar customer demands.[33] Indeed, substantially similar services should be defined broadly and generally, without focusing on minute differences between particular services but rather on their position in the CMRS marketplace and the identity of the customers they are trying to serve. For

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[31] Id. ¶ 12 (citing Second Report and Order at ¶¶ 13, 19 & n.29).

[32] See Further Notice ¶¶ 6, 20-24.

[33] Id. ¶ 13.

these reasons, McCaw believes that consideration should be given to the factors enumerated in the Further Notice, such as: (1) whether service providers claim that their service is substitutable for another CMRS offering; (2) customers are actually choosing between two services when deciding which mobile service to use, and, (3) the respective marketing approaches adopted by the CMRS providers.[34]

If this approach is not adopted, the Commission inadvertently may create loopholes in its "substantially similar" definition, as applied to certain CMRS subparts. This regulatory "disparity" could potentially skew the ability of CMRS providers to compete against each other. This "in turn could lead to the provision of service by an otherwise higher-cost or lower-quality provider."[35] Accordingly, the Commission must carefully ensure that competitors seeking to serve the same customers are classified as "substantially similar" services.

Given ESMR licensees have, in recent years, sought to provide services that are functionally indistinguishable to the consumer from Part 22 cellular services, McCaw agrees with the Further Notice's tentative conclusion to define these two services as substantially similar.[36] Indeed, one

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[34] Id. ¶ 14.

[35] Id. ¶ 13.

[36] McCaw recognizes, however, that the operations of some SMR licensees classified as CMRS providers may not be analogous to Part 22 cellular offerings. See id. ¶ 16.